

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
AT MARTINSBURG**

HOWARD E. MCCORMICK,

Plaintiff,

v.

**CIVIL ACTION NO. 1:04CV207
(BROADWATER)**

**JO ANNE B. BARNHART,
Commissioner, Social Security
Administration,**

Defendant.

ORDER ADOPTING REPORT AND RECOMMENDATION

On this day the above styled case came before the Court for consideration of the Report and Recommendation of Magistrate Judge John S. Kaull, dated October 10, 2005. Neither party filed any objections to the Report.

Upon review of the Magistrate Judge's Report, the Court finds the Magistrate Judge's Report and Recommendation should be and is hereby ORDERED adopted.

The Court, therefore, ORDERS the defendant's motion for summary judgment (Docket # 13) be DENIED. The Court ORDERS that plaintiff's motion for summary judgment (Docket # 11) be GRANTED in part, in that the Commissioner's decision is reversed for the reasons set forth in the Magistrate Judge's Report. Furthermore, this matter is remanded to the Commissioner for further proceedings consistent and in accord with the Report and Recommendation.

It is further ORDERED this action be DISMISSED WITH PREJUDICE based on the reasons set forth in the Magistrate Judge's Report and Recommendation, and STRICKEN from the active docket of this Court.

The Clerk is directed to transmit true copies of this Order to the petitioner and all counsel of record herein.

DATED this **14th** day of November 2005.



W. CRAIG BROADWATER
UNITED STATES DISTRICT JUDGE